

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 61949-7-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
JAMIE L. ELLIOTT,)	
)	
Appellant.)	FILED: July 27, 2009
)	

Appelwick, J. — Elliott argues that there was insufficient evidence to support her conviction for bail jumping. A person is guilty of bail jumping when she has been released by court order or admitted to bail and fails to appear for a scheduled court hearing, having knowledge that her presence is required. RCW 9A.76.170(1). Although the State introduced circumstantial evidence logically showing that Elliott was released by court order or admitted to bail, it failed to prove that she knew her presence was required at the omnibus hearing. We reverse Elliott's conviction and remand for resentencing.

FACTS

On May 16, 2007, Jamie Elliott was charged with theft in the second

degree and two counts of identity theft in the second degree. On December 7, 2007, Elliott failed to appear for an omnibus hearing, so the Skagit County Prosecutor amended the information to add a count of bail jumping.

Court documents admitted at trial included an order for a continuance filed on October 12, 2007, setting the date for the omnibus hearing for Friday, December 7, 2007, at 9:00 a.m., and a bench warrant issued on December 7 for failing to appear at the hearing. The order setting the date for the omnibus hearing specifies that the defendant's presence is required at the trial confirmation, but not at the omnibus hearing.

Elliott testified that she had two court dates on December 7, one in Whatcom County and one in Skagit County (the omnibus hearing in the current case). Elliott's attorney in the Whatcom County case testified that Elliott's appearance in that matter was mandatory. After the hearing in Whatcom County, she called to reschedule the omnibus hearing. Elliott did not testify as to whether she knew her presence at the Skagit County omnibus hearing was mandatory.

On May 13, 2008 the jury returned verdicts finding Elliott guilty of theft in the second degree and bail jumping. It acquitted her on the two counts of identity theft in the second degree. The court sentenced Elliott to three months in jail (one month of confinement and two months of home detention).

Elliott timely appeals, arguing there was insufficient evidence to convict on the bail jumping charge. She also argues that her sentence is based on an

incorrect offender score, as the bail jumping conviction gave her an offender score of one, which resulted in a high end standard range sentence on the theft conviction.

DISCUSSION

Elliott contends that there was insufficient evidence introduced at trial for a rational trier of fact to convict her of bail jumping. Specifically, she contends that the State failed to prove that she had been released by court order or admitted to bail, and that she was required to appear at the December 7 omnibus hearing.

RCW 9A.76.170(1) provides that “[a]ny person having been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state . . . who fails to appear . . . as required is guilty of bail jumping.” The State must prove beyond a reasonable doubt that the defendant knew, or was aware, that she was *required* to appear at the hearing. State v. Ball, 97 Wn. App. 534, 536, 987 P.2d 632 (1999). In order to prove knowledge, the State must prove that the defendant was notified of the required court date before she failed to appear. State v. Fredrick, 123 Wn. App. 347, 353–54, 97 P.3d 47 (2004).

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). We must draw all reasonable

inferences from the evidence in favor of the State and interpret them most strongly against the defendant. Id. By claiming insufficiency, the defendant admits the truth of the State's evidence and all reasonable inferences therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In evaluating the sufficiency of the evidence, circumstantial evidence is as probative as direct evidence. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). We will reverse a conviction for insufficient evidence only when no rational trier of fact could have found that the State proved all of the elements of the crime beyond a reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005).

Elliot contends that the State failed to establish the first element of bail jumping, that she had been released by court order or admitted to bail. RCW 9A.76.170(1). Elliott testified that she traveled to appear in Whatcom County for her December 7 court date. She also testified that after the Whatcom County hearing, she returned home. Although the State could have elicited more precise testimony on this topic, Elliott's testimony nevertheless shows that she was not in custody. When the evidence is viewed in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that Elliott was either released by court order or admitted to bail.

Elliot also contends that the State failed to establish the second element of bail jumping, knowledge that her presence was required at the omnibus hearing. RCW 9A.76.170(1). Elliott testified on cross-examination that she had notice of the December 7 court date for two or three months prior to that date.

She also testified on direct-examination that after the hearing in Whatcom County she called her attorney in Skagit County to reschedule the omnibus hearing. The State relies on this testimony, the October 12 order continuing the omnibus hearing to December 7, and the December 7 bench warrant issued after Elliott failed to appear.

While this evidence undoubtedly shows that Elliott knew of the December 7 hearing, it does not reflect that she knew her presence was required. Ball, 97 Wn. App. at 536 (explaining that the State must prove the defendant knew of the requirement to appear).

In Ball, the notice of trial setting contained language in bold print stating:

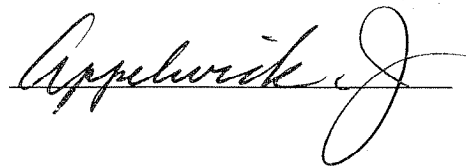
THE DEFENDANT SHALL APPEAR FOR ALL OF THE ABOVE SCHEDULED COURT HEARINGS. Failure to appear by the defendant is a crime, and may result in a bench warrant being issued authorizing the arrest of the defendant.

Id. (emphasis omitted). Unlike in Ball, the order for continuance in this case did not contain clear language apprising Elliott that her presence was required. To the contrary, the order setting the date for the omnibus hearing specifies that the defendant's presence is required at the trial confirmation, but not at the omnibus hearing.

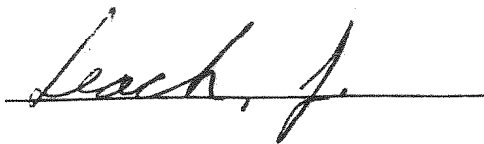
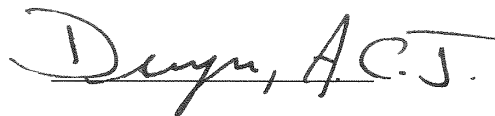
The entry of the bench warrant on December 7 is similarly ineffective to prove that Elliott knew her presence was mandatory; rather, it only shows that she did not appear. Further, the State fails to point to any evidence suggesting that Elliott knew the initial omnibus hearing on October 12 was mandatory, from which a jury could infer that Elliott knew the rescheduled December 7 hearing

was also mandatory.¹

Evidence that Elliott knew of her court date is not a proxy for proving that she knew her presence was required. We reverse the conviction for bail jumping and remand for resentencing on the theft conviction based on a recalculated offender score.

A handwritten signature in cursive script, reading "Appelwick J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, reading "Leach, J.", written over a horizontal line.A handwritten signature in cursive script, reading "Dwyer, A.C.J.", written over a horizontal line.

¹ Her signature on the October 12 order continuing the trial and rescheduling the omnibus hearing is likewise insufficient to show her presence was required on that date, as there is no documentation or testimony establishing that fact.